



UNIVERSITY OF
TORONTO
FACULTY OF LAW

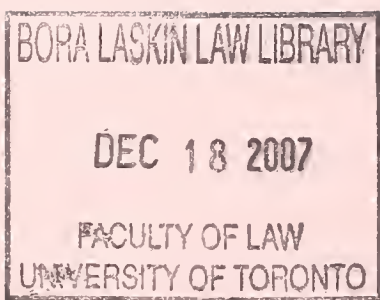


INTRODUCTION TO THE CIVIL LAW TRADITION

Spring 2008

**Professor Catherine Valcke
Faculty of Law
University of Toronto**

**The materials reproduced herein are for the education use of students at the
University of Toronto, Faculty of Law only and are not for commercial sale or use.**

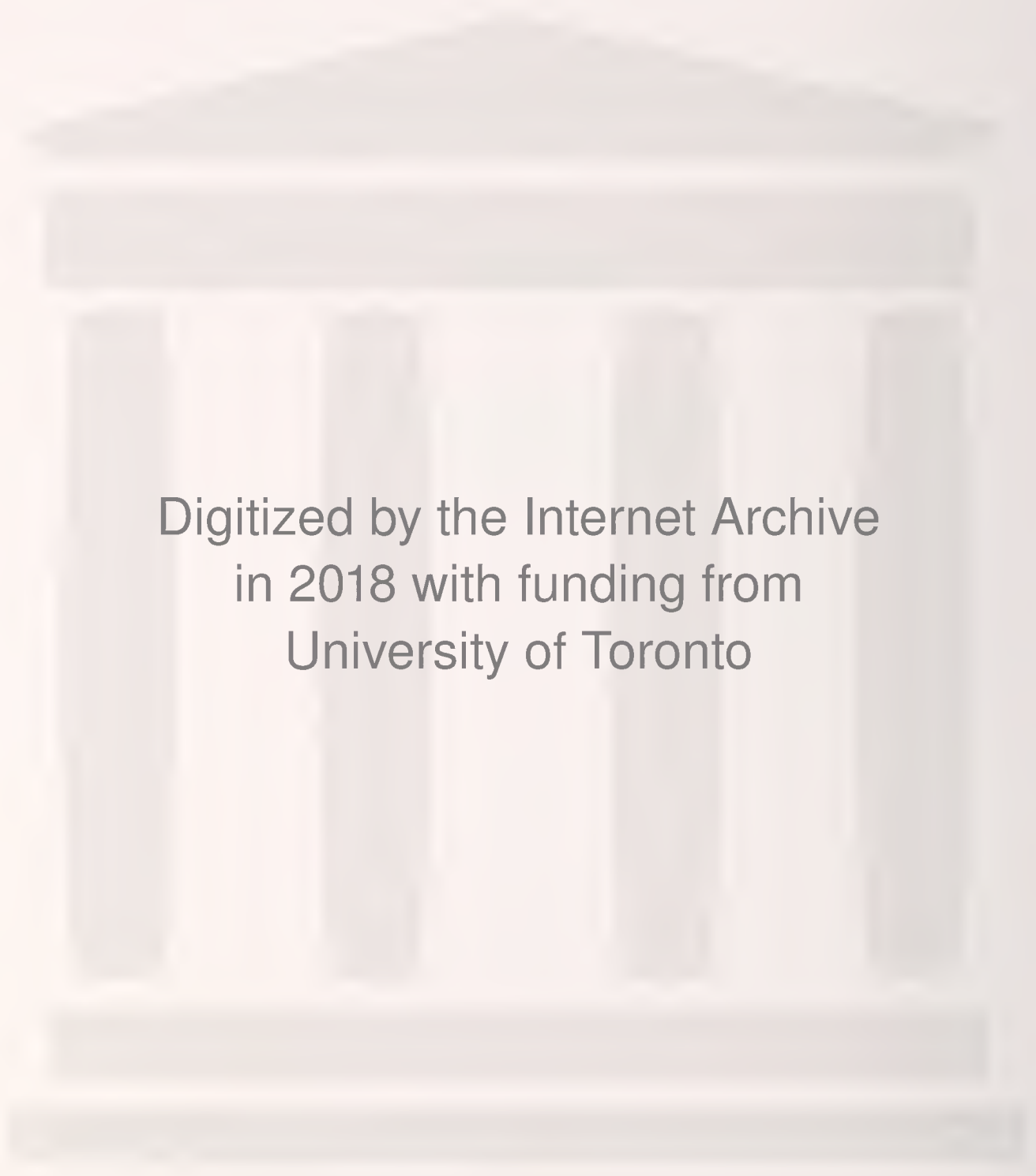


INTRODUCTION TO THE CIVIL LAW TRADITION

Spring 2008

**Professor Catherine Valcke
Faculty of Law
University of Toronto**

The materials reproduced herein are for the education use of students at the University of Toronto, Faculty of Law only and are not for commercial sale or use.



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

<https://archive.org/details/introductiontoci00valc>

INTRODUCTION TO THE CIVIL LAW TRADITION

TABLE OF CONTENTS

I. “Comparative Law: A Matter of Style”

Zweigert & Kötz, *An Introduction to Comparative Law*, 3rd ed. Vol. I, Part B, Section 5 “The Style of Legal Families”. (Oxford: Clarendon Press, 1998).....1

II. The First Life of Roman Law

Alan Watson, *The Making of Civil Law*, pp. 1-10. (Cambridge, MA: Harvard University Press, 1981).....7

Frederick Henry Lawson, “The Contribution of Roman Law to Western Civilization” in *Selected Essays*, Vol. 1 (*Many Laws*), chapter 6. (New York: Elsevier North-Holland, 1977).....13

III. The Second Life of Roman Law

Van Caenegem, *Judges, Legislators and Professors*, “The Common Law is Different: Ten Illustrations”, pp. 1-4, 6-16, 39-83, 88-92, 109-111, 124-126 (excerpts) 22

Alan Watson, *The Making of Civil Law*, pp. 14-22. (Cambridge, MA: Harvard University Press, 1981).....48

IV. Rationalism & Universalism – French Revolution

Fouillée, “L’Idée Moderne du Droit” in *Modern French Legal Philosophy* (Modern Legal Philosophy Series, Vol. VII, 1916), pp. 16-23, 27-32, 37-45, 47-55.....51

Pierre Birnbaum, *The Idea of France*, pp. 7-15 63A

John E.C. Brierley and Roderick Alexander Macdonald, *Quebec Civil Law: an introduction to Quebec private law*, paragraphs 125-132 (excerpts) (Toronto, E. Montgomery Publications, 1993).....64

Tremblay v. R., 33 E.T.R. (2d) 298.....69

V. French Codification

- René David and John E.C. Brierley, *Major Legal Systems in the World Today: an introduction to the comparative study of law*, 3rd ed. (London: Stevens, 1985), pp. 80-101.....74
- Frederick Henry Lawson, “The Sources of French Law” in *Selected Essays*, Vol. II (*The Comparison*), chapter 13, pp. 290-295. (New York: Elsevier North-Holland, 1977).....85
- A. Tunc, “The Grand Outlines of the Code”, in *The Code Napoleon and the Common Law World*, (1950).....88
- Catherine Valcke, “Quebec Civil Law and Canadian Federalism”, (1996) 21 Yale J. Int’l L. 67.....94
- Société Civ. Immob. Les Genevriers v. Bonnin, Cass. Civ. April 29, 1969, 1970 D.S. Jur. 23.....110

VI. The Civil Law of Quebec – Quebec as a “Mixed Jurisdiction”

- Castel, *The Civil Law System in the Province of Quebec*, pp. 8-34.....111
- Doré v. Verdun (City), [1997] 2 S.C.R. 862.....115
- Mirjan R. Damaska, *The Faces of Justice and State Authority: A comparative approach to the legal process*, pp. 16-18 “Two Ideals of Officialdom”, 29-66 “The Hierarchical and the Coordinate Ideals in Historical Context”. (New Haven: Yale University Press, 1986)131
- Prud’homme v. Prud’homme, [2002] S.C.J. No. 86 (excerpts).....153
- Retail, Wholesale and Department Store Union, Local 580 [R.W.D.S.U.] v. Dolphin Delivery Ltd. [1986] 2 S.C.R. 573 (excerpts).....172
- L.J. Romero, “Specific Performance in Comparative Contract Law: Some Preliminary Observations”, (1986) C. de D. 785, pp. 803-810.....178
- Donald Harris & Denis Tallon, eds., *Contract Law Today: Anglo-French Comparisons*, “Taxonomy of Remedies”, pp. 266-270. (Oxford: Clarendon Press, 1989)182
- Articles 1142-44 C.N.; Articles 469, 751 C.P.C.....185

Les Propriétés Cité Concordia Ltée v. La Banque Royale du Canada, [1981], C.S. 812.....186

Quebec County Railway v. Montcalm Land, (1929), 46 C.B. 262.....187

Canada Paper Co. v. Brown, [1922] S.C.R. 243 at 246.....188

VII. Selected Legal Institutions

- **Contractual Interpretation (readings TBA)**

- **“Laesio enormis”**

Georges Rouhette, “2: The Obligatory Force of Contract in French Law” in Donald Harris & Denis Tallon, *Contract Law Today: Anglo-French Comparisons*, pp. 38-64 (footnotes excluded) (Oxford: Clarendon Press, 1989).....189

Frederick Henry Lawson, “Laesio enormis” in *Selected Essays*, Vol. II (*The Comparison*), chapter 13, pp.316-317. (New York: Elsevier North-Holland, 1977).....201

Zimmerman, *The Law of Obligations*, pp. 255-56, 259-70.....202

- **Contractual Mistake**

Catherine Valcke, *Convergence and Divergence between the English, French and German Conceptions of Contract*, forthcoming, Eur. Rev. of Private Law (2008).....209

Articles 1108-1110 C.N; Articles 991-992 C.C.L.C.....226

Gilles Huot v. Jacques Ouellette [1981] C.S. 872.....227

W.T. Rawleigh Co. v. Dumoulin, [1926] 4 D.L.R. 141.....230

Von Mehren, *The Civil Law System*, pp.493-494.....235

- **“Bonne foi” and “Abuse of Right”**

Article 2 C.P.C.236

Mayrand, A., “The Abuse of Rights in France and Quebec”, (1973-74), 34 La. L.R. 993.....237

Planiol and Ripert, *Treatise on the civil Law*, Vol. II, Part I, paragraphs 870-870A.....245

Christie v. York [1940] SCR 139 (Sup Ct).....	249A
National Bank of Canada v. Soucisse, [1981] 2 S.C.R. 339.....	250
Houle v. Canadian National Bank, [1990] 3 S.C.R. 122.....	261
Articles 1382-1383 C.N.	278
Simon Whittaker and Reinhard Zimmerman, <i>Good Faith in European Contract Law</i> , “Good Faith in European Contract law: Surveying the legal landscape”, pp. 16-39 (New York, Cambridge University Press, 2000).....	279
Finney v. Barreau du Québec, [2004] S.C.J. No. 31.....	292

VIII. Civil law and the Welfare State

Consumer Protection Act exercise (no readings)

IX. Legal Education at Civil Law

Catherine Valcke, “Legal Education in a ‘Mixed Jurisdiction’: The Quebec Experience”, 10 *Tulane European & Civil Law Forum* 61 (1995), pp. 79-138..298